



U.S. Citizenship
and Immigration
Services

HW

[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date:

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IN RE:

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APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 9, 2003.

On appeal, counsel asserts that the applicant's United States citizen spouse will suffer severe hardship if the applicant is not allowed to remain in the United States. Counsel further contends that the applicant did not perform an act that resulted in the creation of fraudulent documents. *Form I-290B*, dated July 7, 2003.

In support of these assertions, counsel submits a letter, dated July 31, 2003. The record also contains a letter from the applicant's spouse, dated December 5, 2002; a marriage certificate for the applicant and her spouse; a copy of the United States birth certificate of the applicant's husband and copies of financial and tax documents for the applicant and her spouse. The entire record was considered in rendering this decision.

The record reflects that the applicant paid for fraudulent documents to include an H-1B/I-94 Departure Record and an I-797 Approval Letter in order to obtain admission to the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Counsel contends that the applicant "did not perform an act that resulted in the creation of fraudulent documents. The [applicant] did not request or consent to the creation of fraudulent documents." *Form I-*

290B, dated July 7, 2003. The AAO notes that section 212(a)(6)(C)(i) of the Act applies to an alien who seeks admission to the United States by fraud or willful misrepresentation. The statute does not differentiate between aliens who have created or requested the creation of fraudulent documents and those who have not, as asserted by counsel. The AAO finds that counsel fails to provide documentation or to cite precedent to support his contention and the contention is, therefore, unpersuasive.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. 22 I&N Dec. at 565-566.

Counsel contends that the applicant provides home care to the elderly members of her family. *Letter from Gregory Chandler*, dated July 31, 2003. Counsel emphasizes that the applicant speaks Tagalong to these relatives, which her husband is unable to do. Counsel concludes that "the physical and mental health of the elderly family members would be endangered if [REDACTED] is not permitted to remain in the United States." *Id.* The record fails to establish the level of care required by the applicant's relatives beyond stating that they are elderly and apparently, do not speak or understand English. Further, the record fails to demonstrate that the applicant is uniquely qualified to care for the indicated family members or that the applicant's husband is unable to secure other care for his relatives while he works.

Counsel also contends that the applicant's husband would be impaired in his ability to provide financial support for himself and his relatives if the applicant remains inadmissible to the United States. *Id.* The record fails to provide support for this assertion. To the contrary, the record reflects that the applicant's spouse is gainfully employed and financially solvent. *U.S. Individual Income Tax Returns for [REDACTED] 2000 and 2001.* The AAO notes that the record fails to address other factors identified in *Matter of Cervantes-Gonzalez* including the qualifying relative's family ties outside the United States and the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community

ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will likely endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.